IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Bail Appl..No. 5042 of 2007()

CRIME NO.584/07 OF THODUPUZHA POLICE STATION

PETITIONERS

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1. VINCENT VARGHESE, AGED 30,
PUTHUSSERIL HOUSE, VANDAMATTOM P.O.

2. JAISON JOSE, AGED 21,
PUTHUSSERIL HOUSE, KARIMANNOOR P.O.,
KARIMANNOOR - 685 581.

3. DILEEP BABY, AGED 20,
PUTHUSSERIYIL HOUSE, KARIMANNOOR P.O.,
KARIMANNOOR - 685 581.

BY ADV. SRI.RENJITH B.MARAR
SMT.LAKSHMI RENJITH

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, THODUPUZHA POLICE
STATION, THROUGH BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 07/09/2007 ALONG WITH BA NO. 5283 OF 2007 BA NO. 5092 OF 2007
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos. 5042, 5092 & 5283 OF 2007

Dated this the 7th day of September, 2007

ORDER

These applications are for anticipatory bail filed by the petitioners who are accused 1, 2, 4, 5, 6, 10 and 11 in a crime registered, inter alia, under Sec.308 of the IPC. The crux of the allegations against the petitioners is that they were members of an unlawful assembly of persons, who, on account of animosity arising from an earlier incident between the victims – allegedly the members of a trade union (C.I.T.U.), chased two of the injured persons and unleashed an attack on them with dangerous weapons resulting in serious injuries to one of them. The alleged incident occurred on 27/7/07. The F.I.R. was registered later on the same day. No accused is named in the F.I.R. In the course of investigation, the complicity of 11 accused persons has been ascertained. They have been arrayed as accused. Accused No.3 has already

been arrested. The petitioners herein apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The victims belong to the C.I.T.U. They wield considerable amount of influence with the police. Because of such influence, false allegations are being raised against the petitioners herein. The petitioners do not deserve to endure the trauma of arrest and incarceration in prison. They may be granted anticipatory bail, it is prayed.

3. The learned counsel for the petitioners, in particular, relies on the circumstance that no prior motive is even alleged. He further contends that in the First Information Statement there is no semblance of an allegation of use of sword sticks as weapons, whereas such allegation has been incorporated later. Thirdly and finally he contends that the very fact that the offence under Sec.308 of the IPC has been alleged must convey to the court that it is a vexatious proceeding not justified the facts and circumstances.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the C.I.T.U. members are not shown to have any prior motive against the petitioners as is evident from the fact that no person has been

named in the F.I.R. The learned Public Prosecutor further points out that though in the First Information Statement the weapons used have not been narrated in detail, the allegation to that effect has subsequently been made and the injuries suffered by the victims also indicate the truth and probability of such allegation. The learned Public Prosecutor submits that the inclusion of Sec.308 of the IPC is also perfectly justified going by the nature of the three incised injuries suffered by the principal victim. This considered along with the fact that the weapons like sword sticks and wooden sticks were used must satisfy the court that the inclusion of the allegation under Sec.308 of the IPC is justified.

5. I have considered all the relevant inputs. I shall scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected by the Investigators. Suffice it to say that in the nature of the contentions raised, the Case Diary was placed before me for my perusal by the learned Public Prosecutor. The same has been perused. Having considered all the relevant inputs, I do not find any features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is an eminently fit

case where the petitioners must appear before the learned Magistrate or the Investigating Officer, at their choice, and seek regular bail in the ordinary course.

6. In the result, these bail applications are dismissed; but with the observation that if the petitioners surrender before the Investigating Officer of the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge